

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

JACQUELINE PALUMBO,
Plaintiff,

v.

EAST STROUDSBURG UNIVERSITY,
Defendant.

:
:
:
:
:
:
:

Civil Action No.:

JURY TRIAL DEMANDED

COMPLAINT

Plaintiff Jacqueline Palumbo (“Ms. Palumbo”), by her attorneys, Broughal & DeVito, L.L.P., brings this Complaint against Defendant East Stroudsburg University (“ESU”).

NATURE OF ACTION

1. This Complaint alleges violations of the Americans With Disabilities Act, as amended, 42 U.S.C. § 12101 *et seq.* (“ADA”), and the Pennsylvania Human Relations Act, as amended 43 Pa. C.S. § 951 *et seq.* (“PHRA”).

JURISDICTION AND VENUE

2. This Court has original jurisdiction over Plaintiff’s ADA claims under 28 U.S.C. § 1331, and supplemental jurisdiction over the subject matter over Plaintiff’s PHRA claims under 28 U.S.C. § 1367(a).

3. Venue is proper in this Court under 28 U.S.C. § 1391(b)(1) because Defendant ESU resides in this judicial district, and under 28 U.S.C. §§ 1391(b)(2) because a substantial part of the events or omissions giving rise to the claims occurred in this judicial district.

PROCEDURAL PREREQUISITES

4. Ms. Palumbo dual-filed a Complaint, No. 201801132, with the Pennsylvania Human Relations Commission (“PHRC”) and the United States Equal Opportunity Employment Commission (“EEOC”), Charge No. 17F-2019-60266 on October 31, 2018.

5. On April 25, 2022, the PHRC issued a Finding of No Probable Cause.

6. On June 9, 2022, upon request of Ms. Palumbo, the EEOC issued a Dismissal and Notice of Rights.

FACTS

7. Ms. Palumbo is an adult female who resides at 2566 Kings Mill Road, Hellertown, Pennsylvania 18301.

8. Defendant ESU is a state university with an address of 200 Prospect Street, East Stroudsburg, Pennsylvania 18301.

9. Ms. Palumbo worked for ESU in the Information Technology Department as a Network Services Facilitator.

10. Ms. Palumbo suffers from anxiety disorder, a recognized disability under the ADA and PHRA (“Anxiety Disorder”).

11. Ms. Palumbo's disability, anxiety disorder, constitutes a mental impairment of major life activities including impairing Ms. Palumbo's ability to sleep, work, concentrate, think, or drive.

12. Driving is the main source of Ms. Palumbo's anxiety.

13. Ms. Palumbo has extreme anxiety when required to drive at night or in poor road conditions, or if she had a bad experience during a previous drive.

14. Ms. Palumbo is able to perform all of her work duties remotely.

15. On July 10, 2018, Ms. Palumbo submitted a request for an ADA accommodation, in writing, to human resources to permit her to work from home in Hellertown or to work at a site closer to her home requiring less driving during bad weather and other situations where she might have a panic attack from driving (“Accommodation Request”). A copy of the

Accommodation Request is attached as Exhibit “1,” which includes the unsigned ADA Request for Accommodation Form, as Plaintiff did not keep a signed copy, and a completed and signed ADA Medical Certification from M. Katherine Mitchell, D.O.

16. Respondent has a site in Bethlehem from which Ms. Palumbo could work remotely.

17. Respondent’s Bethlehem site is accessible to Ms. Palumbo on days when she cannot drive because of her Anxiety Disorder.

18. Other employees who do not suffer from an anxiety disorder are permitted to work from home.

19. Respondent failed to engage in any dialogue with Ms. Palumbo between July 10, 2018, and August 23, 2018, concerning the Accommodation Request.

20. On August 14, 2018, Ms. Palumbo, through her attorney, submitted a complaint in writing to Respondent about its failure to meet its ADA and PHRA obligations (the “Written Complaint”). A copy of this Written Complaint is attached as Exhibit “2.”

21. On August 23, 2018, in retaliation for the Accommodation Request and Written Complaint, Ms. Palumbo was informed that her ADA request was rejected.

22. On August 23, 2018, Respondent did not offer any possible alternatives as part of a dialogue.

23. Respondent refused the Accommodation Request and said it was up to her to figure out something else.

24. In retaliation for Ms. Palumbo’s Accommodation Request and Written Complaint, Respondent attempted to change Ms. Palumbo’s job description and title in order to justify its denial of her Accommodation Request.

25. Ms. Palumbo was forced to take FMLA leave in order to preserve her employment as a result of her disability and inability to drive at night.

26. When her FMLA leave expired, Defendant ESU placed Ms. Palumbo on extended leave because she was unable to drive at night and because Defendant ESU refused her request for a reasonable accommodation.

27. Ms. Palumbo continued to seek a reasonable accommodation from Defendant ESU while she was on medical leave.

28. On September 17, 2019, Defendant ESU fired Ms. Palumbo because she was not able to return to work full-time, full-duty, in her original work location in East Stroudsburg, Pennsylvania.

29. The stated reason for termination was pretextual because Ms. Palumbo was perfectly able to perform all her job duties remotely.

30. The termination was directly related to Ms. Palumbo's disability.

31. The termination was in retaliation for Ms. Palumbo's seeking an accommodation.

32. Ms. Palumbo was able to perform her job duties remotely and had done so while she worked for Defendant ESU.

COUNT I
Violation of ADA

33. Ms. Palumbo incorporates by reference the foregoing paragraphs 1 through 32 as though they were set forth in full here.

34. Ms. Palumbo is an individual with a disability for purposes of the ADA.

35. Ms. Palumbo's disability substantially limits her in major life activities including, but not limited to, sleeping, working, thinking, concentrating, or driving.

36. Additionally, Defendant ESU regarded Ms. Palumbo as disabled.

37. Ms. Palumbo was qualified for the position of Network Services Facilitator at Defendant ESU as she held that position from 1998 through 2019 and because, before that from 1995 to 1998, she worked for Defendant ESU as a Systems Software Specialist.

38. Ms. Palumbo requested that Defendant ESU provide her with reasonable accommodations for her disability in the form of working from home when necessary to avoid driving or working in a location closer to home during periods of high anxiety.

39. Defendant ESU failed and refused to provide Ms. Palumbo with the requested reasonable accommodations and to engage in any dialogue regarding what other accommodations might work, if any.

40. Defendant ESU retaliated against Ms. Palumbo because Ms. Palumbo requested and used medical leave as a reasonable accommodation for her disability.

41. Defendant failed and refused to engage in good faith in a dialogue with Ms. Palumbo to determine if she could return to work as a Network Services Facilitator with reasonable accommodation for her disability.

42. Defendant ESU discriminated against Ms. Palumbo on the basis of her disability when it fired her because she was unable to return to work fully without any reasonable accommodations.

43. Defendant ESU's actions constitute disability discrimination and retaliation in violation of the ADA.

WHEREFORE, Plaintiff Jacqueline Palumbo respectfully requests that this Honorable Court enter judgment in her favor and against Defendant East Stroudsburg University with an award as follows:

- Back pay in an amount to be determined at trial;
- Reinstatement or, in the alternative, front pay in an amount to be determined at trial;
- Compensatory damages, including for emotional harm and mental anguish and suffering, in an amount to be determined at trial;
- Punitive damages, in an amount to be determined at trial;
- Attorney fees and costs; and
- Any other relief this Honorable Court deems necessary and just.

COUNT II
Violation of the PHRA

44. Ms. Palumbo incorporates here by reference the foregoing paragraphs 1 through 43 as though they were set forth in full.

45. The above violations of Plaintiff's rights under the ADA are also violations of the Pennsylvania Human Relations Act.

WHEREFORE, Plaintiff respectfully requests that this Honorable Court enter judgment in favor of Plaintiff and against Defendant with an award as follows:

- Back pay in an amount to be determined at trial;
- Reinstatement or, in the alternative, front pay in an amount to be determined at trial;
- Compensatory damages, including for emotional harm and mental anguish and suffering;
- Attorney fees and costs; and
- Any other relief this Honorable Court deems necessary and just.

JURY DEMAND

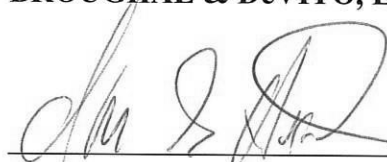
46. Plaintiff demands a trial by jury on all claims and issues so triable.

BROUGHAL & DeVITO, L.L.P.

Date:

7/19/2022

By:



JOHN S. HARRISON, ESQUIRE

Attorney I.D. #53864

ERIKA A. FARKAS, ESQUIRE

Attorney I.D. #313686

38 W. Market Street

Bethlehem, PA 18018

Telephone No.: (610) 865-3664

Facsimile No.: (610) 865-0969

johnharrison@broughal-devito.com

erikafarkas@broughal-devito.com

Attorneys for Plaintiff

EXHIBIT 1

East Stroudsburg University
Human Resources Office
**ADA Request for
Accommodation Form**

Date _____

Employee Name Jacqueline Palumbo Employee ID 22224

Title Network Services Facilitator Department Computing & Communication Services

Work Location 303 Stroud Hall Supervisor David Parfitt

Work Schedule (days and hours) Monday-Friday 8:00Am-4:30PM

Please use the back of sheet if you need more room to answer any questions listed below.

1. Please describe the physical or mental impairment(s) that limit(s) your ability to do your job.
Anxiety disorder and panic attacks while driving
 - a. What, if any, job function are you having difficulty performing?
No problems doing my job Commute can cause anxiety or panic attacks
 - b. What, if any, employment benefit are you having difficulty accessing?
2. Describe the accommodations you are requesting. Be as specific as possible (i.e., if you are requesting a piece of equipment or device, please provide description, manufacturer, cost, where to order, etc.).
I would like to be able to work out of the Bethlehem site when unable to drive Would need a desk, chair, PC and phone where my calls could be forwarded I could then remote into my current PC and perform my daily duties
 - a. If you are unsure of what accommodation is needed, do you have any suggestions?
 - b. Have you had in accommodations in the past for this same limitation? ____ Yes X No
If yes, what were they and how effective were they?
3. Describe how the requested accommodations will enable you to perform your job.
When unable to drive I can get a ride to the Bethlehem site. When there I can perform my duties just as I would in Stroud 303.

East Stroudsburg University
Human Resources Office
**ADA Request for
Accommodation Form**

4. Please describe the expected duration of the requested accommodation:

Permanent

Until As Needed

5. Please provide any additional information that might help HR evaluate your request.

In December 2017 anxiety put me in the hospital ICU for 5 days. Causing me to lose a month of work due to the anxiety and panic attacks. Having the option of working from home or the Bethlehem site will reduce the amount of days I would miss due to my medical condition. By being able to work from home or at the Bethlehem there would be no interruption to my work and no additional work or responsibilities to my co-workers.

Signature _____ Date _____

East Stroudsburg University
Human Resources Office
**ADA Request for
Accommodation Form**

Release of Information for Employees

I, Jacqueline Palumbo, understand that I am giving permission to _____ of the East Stroudsburg University Human Resources Office to contact the following individual(s) for purposes of requesting documentation/information regarding my disability including the diagnosis and limitations associated with that diagnosis. I understand that that this permission will remain in effect from the day I sign this document until I revoke permission in writing or am no longer affiliated with the Office of the Chancellor of the Pennsylvania State System of Higher Education.

Name M. Katherine Mitchell, DO
Address 708 Main St Suite 200, Hellertown, PA 18055
Phone (610) 838-7069 E-mail _____

Name Kimberly Adams
Address 308 E. Broad Street, Bethlehem, PA 18018
Phone 610-861-8779 E-mail _____

Name Lyn Felix
Address 3037 S. Pike Avenue #105, Allentown, PA 18103
Phone 610-282-0709 E-mail _____

I understand that communication with the above named individual(s) will not include personal disclosures that do not pertain to my disability(ies). I understand that all medical information related to my request for accommodation is confidential and will be maintained in a secured location within the Human Resources Office separate and apart from my personnel file. I further understand that I will be required to provide appropriate documentation of my disability, including the impact of functional limitations on my ability to perform the essential functions of my job.

Signature Date

East Stroudsburg University
Human Resources Office
**ADA Request for
Accommodation Form**

Request for Accommodation Checklist

TASK	DATE	HR Initials
Employee self-identifies to HR.		
Job analysis completed and submitted by supervisor.		
Essential functions analysis completed and submitted by supervisor.		
Job description and job analysis attached to medical certification and given to employee for completion.		
Medical certification received by HR.		
Determination of eligible disability made by HR. Determination: <input checked="" type="radio"/> Yes <input type="radio"/> No		
Accommodations identified, if applicable.		
Accommodations agreed upon by employee and Supervisor, if applicable.		
Accommodation agreement signed by employee, if applicable.		

East Stroudsburg University
Human Resources Office
**ADA Request for
Accommodation Form**

ADA Medical Certification

Note: The information sought on this form pertains only to the condition for which the employee is requesting accommodation under the ADA.

To be completed by Employee
Employee Name Jacqueline Palumbo Employee ID 22224
Title Network Services Facilitator Department Computing & Communication Services
Employee Signature _____ Date _____

To be completed by Health Care Provider
Instructions: Attached are copies of the employee's job description and a job analysis which indicates the essential functions of the position and includes the physical/mental demands and the environmental conditions associated with the job. Please review both the attached job description and job analysis and prior to completing this form.

Physician Name M. Katherine Mitchell DO
Specialization/Type of Practice PCP
Address 708 Main St. #200 Hellertown, Pa 18055
Phone Number 610-838-7009

Questions to help determine whether an employee has a qualifying disability.

1. Does the employee have a mental or physical impairment? ☒ Yes ☐ No
2. What is the impairment? Anxiety
3. Is the impairment long-term or permanent? ☒ Yes ☐ No
4. If not permanent, how long will the impairment likely last? Unknown at this time.
5. Is this condition considered a chronic condition which:
 - a. Requires periodic visits for treatment by a health care provider? ☒ Yes ☐ No
 - b. Continues over an extended period of time? ☒ Yes ☐ No
 - c. May cause episodic rather than a continuing period of incapacity? ☒ Yes ☐ No
6. Does the impairment mean that the employee is substantially limited in one or more major life activities? ☒ Yes ☐ No

7. If yes, what major life activity(s) is/are affected?
ADA Accommodation Form Rev. 11/09

Communting to work | Fear of driving.

East Stroudsburg University
Human Resources Office
**ADA Request for
Accommodation Form**

☐ caring for self
☐ lifting
☐ seeing
☐ reaching
☐ breathing
☐ working
☐ reproduction

☐ walking
☐ interacting w/others
☐ sleeping
☐ speaking
☐ thinking
☐ toileting
☐ other: _____

☐ hearing
☐ standing
☐ performing manual tasks
☐ concentrating
☐ learning
☐ sitting

Questions to help determine whether an accommodation is needed.

1. What limitation(s) in major life activities is/are interfering with this employee's job performance?

Inability to drive to work or anywhere due to severe
Anxiety (& panic attacks).

2. What job function(s) listed in the attached job description and job analysis is the employee having trouble performing because of the limitation(s)?

None - She can not get to work at all due to
anxiety over driving. Once at work she can
function fully.

3. How does the employee's limitation(s) in major life activities interfere with his/her ability to perform the job functions listed in the attached job analysis?

She can not drive to work to perform her duties.

Questions to help determine effective accommodation options.

1. Do you have any suggestions regarding possible accommodations to improve job performance? If so, what are those suggestions?

- Working at a closer-to-home site.
- Working from home.

East Stroudsburg University
Human Resources Office
**ADA Request for
Accommodation Form**

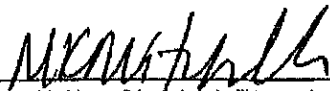
2. How would your suggestions improve the employee's performance?

Eliminate her anxiety/panic completely as driving
is the main source of her anxiety - she can
otherwise fully function at work and perform her job
duties without difficulty.

Additional comments

Please consider granting my patient the option to
work at a closer to home site on days that
her driving anxiety is high.

Health Care Provider Signature



Date

6/18/18

All information provided is confidential and will be retained in the employee's medical file.

Return form to:

Human Resources Office, 200 Prospect Street, East Stroudsburg, PA 18301
Fax: 570-422-3450

EXHIBIT 2

LAW OFFICES
BROUGHAL & DeVITO, L.L.P.

38 WEST MARKET STREET
BETHLEHEM, PENNSYLVANIA 18018-5703

JAMES L. BROUGHAL
LEO V. DeVITO, JR.
JOHN S. HARRISON
JAMES F. PRESTON*
WENDY A. NICOLosi
LISA A. PEREIRA*
KEVIN H. CONRAD

TELEPHONE
(610) 865-3664

FAX
(610) 865-0969

E-MAIL
lawyers@broughal-devito.com
WEBSITE
www.broughal-devito.com

August 14, 2018

*ALSO MEMBER, NEW JERSEY BAR

SENT VIA ELECTRONIC & REGULAR MAIL

David Parfitt, IT Services Manager
East Stroudsburg University
200 Prospect Street
East Stroudsburg, PA 18301

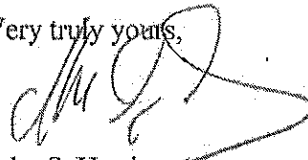
Re: Jacqueline Palumbo Request for Reasonable Accommodation under ADA

Dear Mr. Parfitt:

I represent Jacqueline Palumbo, who has worked for East Stroudsburg University for more than 23 years and as a Network Services Facilitator for ESU since 1998. I write in an effort to have ESU grant the request for a reasonable accommodation that was made by Ms. Palumbo on or about July 10, 2018.

It appears that ESU is failing to meet its obligations under the ADA and PHRA to grant a request for a reasonable accommodation or to engage in a dialog required under the ADA. Therefore, I renew Ms. Palumbo's request for an accommodation, to enable her to work from a remote location when her anxiety condition causes her to be unable to drive, be granted. If we do not hear back from you within five (5) business days of the date of this letter, we will assume that ESU has no interest in granting the request for a reasonable accommodation or meeting its obligation to conduct a dialog under the ADA and will act accordingly.

Very truly yours,



John S. Harrison

JSH/dnk

pc: Jacqueline Palumbo (via electronic mail)